IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 18053 of 2004

Between:

Smt. N. Mallamma, W/o. Late Ramaswamy,
R/o. H.No. 13-1-13/2/A, Amarnagar Colony, Mangalhat, Hyderabad.

..... PETITIONER

AND

1 The Superintendent, Engineer, Operation Assessment, A.P. Transco, South Circle, Hyderabad, Office at Sitharambagh, Hyderabad.
2 The Assistant Divisional Engineer, A.P. Transco. Distiribution - III, City, APCPDCL, sitharambagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in issuing initial assessment notice to the petitioner vide Lr.No. ADE/D.III/838 dated 12-9-2003 though the Petitioner is not in possession and enjoyment of H.No. 13-1-13/2/3 at Mangalhat, Hyderabad and further to declare the action of the 1st respondent in not causing detailed enquiry on the representation of the Petitioner as against the above initial assessment notice as illegal, unlawful, contrary to law and against principles of natural justice, consequently directing the respondents to cause a detailed enquiry in the matter and till completion of such enquiry the initial assessment notice may not be given effect.

Counsel for the Petitioner : MR.M.DAMODAR REDDY

Counsel for the Respondents : SC FOR AP TRANSCO

The Court made the following :

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.18053 of 2004

ORDER :

Heard Sri Damodar Reddy, the learned Counsel representing the writ petitioner and the Standing Counsel for A.P. Transco.

The writ petitioner filed the present Writ Petition praying for an order or direction more particularly in the nature of writ of mandamus declaring the action of the 2nd respondent in issuing initial assessment notice to the petitioner vide Lr.No.ADE/D-III/838 dated 12-9-2003 though the petitioner is not in possession and enjoyment of H.No. 13-1-13/2/3 at Mangalhat, Hyderabad and further to declare the action of the 1st respondent in not causing detailed enquiry on the representation of the petitioner as against the above initial assessment notice as illegal, unlawful, contrary to law and against principles of natural justice and consequently directing the respondents to cause a

detailed enquiry in the matter and till completion of such enquiry the initial assessment notice may not be given effect and to pass such other suitable orders.

It is the case of the petitioner that she is the absolute owner of the house bearing No.13-1-13/2/A and also house bearing No.13-1-13/2/3 at Amarnagar colony, Mangalhat, Hyderabad and at present she is residing in the house bearing No.13-1-13/2/A along with her family whereas house No.13-1-13/2/3 was let out to one Smt.Neelamma who is the daughter-in-law of her husband through his first wife. The above two houses are having two separate electricity service connections. It is also stated that the said Neelamma failed to vacate the aforesaid house and the writ petitioner filed O.S.No.1535/98 on the file of I Senior Civil Judge, City Civil Court, Hyderabad praying for eviction of Smt.Neelamma therefrom and for recovery of possession of the said house. While the suit was pending, for non-payment of electricity charges by the said Neelamma, the above service connection bearing No.C4/3607 was disconnected by A.P. Transco long back. It is further stated that the above suit was dismissed on the ground that Smt.Neelamma also is having share in the said house and as against the said Judgment and decree the writ petitioner preferred C.C.C.A.No.69/2003 on the file of this Court which is pending. It is further stated that in view of the dismissal of O.S.No.1535/98 the said Neelamma is continued in possession and enjoyment of the aforesaid house. While so, on 24-9-2004 the 2nd respondent served a initial assessment notice dated 12-9-2003 alleging that the service connection No.C4/3607 was under

disconnection and when he inspected the premises No.13-1-13/2/3 on 7-8-2003 at 17.20 hours the inhabitants of the said house had been availing supply of electricity from LTOH line directly tapped by PVC insulated service wire and thus pilfered the energy. It is stated that the service connection in the name of the writ petitioner was under disconnection since she was not in possession of the property and in view of the same the question of pilferage of energy would not arise. It is further stated that the respondents are threatening and forcing the writ petitioner to recover the said amount with disconnection of the service connection of her house bearing No. 13-1-13/2/A. Specific stand was taken that it is the duty of the respondents to ascertain who is living in house No.13-1-13/2/3 at the time of their inspection and should have conducted an enquiry to ascertain the person who had committed pilferage of the energy. It is further stated that the employees of A.P. Transco are visiting the house of the writ petitioner every day and threatening her with dire consequences. Hence the present Writ Petition had been filed.

The respondents filed a counter affidavit stating that the petitioner got two separate service connections to her house bearing Nos. 13-1-13/2/A and 13-1-13/2/3 at Amarnagar colony, Mangalhat, Hyderabad and both were obtained by the petitioner only and the electricity service connection bearing No.C4/3607 stands in the name of the petitioner and the same was disconnected in the month of August 2002 for non-payment of pending dues of Rs.3157/-. It was further stated that on 7-8-2003 at 17.20 hours the then ADE/DPE-I inspected the service connection No.C4-3607 situated in the premises of H.No. 13-1-

13/2/3, Mangalhat, old city, Hyderabad and found that the petitioner was indulging in theft of the energy dishonestly for domestic purpose. The service was under disconnection at that time. The Inspecting Officer found that the petitioner was availing supply from L.T. Over Head lines directly tapping by PVCC insulated service and feeding into the service connection net work thus suppressing the meter reading and indulged in pilferage of electrical energy. The loss sustained by the Corporation due to theft of energy had been provisionally estimated at Rs.12,225/-. Therefore the then ADE/Operation issued initial assessment notice (Pilferage) dated 12-9-2003 and requested to pay Rs.6082/- if she is desirous of obtaining the restoration of supply pending enquiry and Rs.50/- towards supervision charges. The said enquiry is still pending. The petitioner did not choose to pay the said amount and the said service connection had been under disconnection. It was further stated that the petitioner is having another service connection situated in house bearing No. 13-113/2/A in her name wherein she is residing at present. The petitioner is liable to pay arrears and the contention of the petitioner that the said premises was let out to one Leelamma and the same Leelamma is continuing in possession of the said house and the legal proceedings are pending is put to strict proof. It was further stated that irrespective of their possession the petitioner who obtained service connection in her name from the Department is liable to pay regular C.C. charges, arrears etc. The initial assessment notice was served on the petitioner long back and till today she did not chose to pay any amount. In addition, there are arrears in respect of service connection No.4C-3607 and the petitioner is liable to pay the said dues also. Further,

specific stand was taken by the respondents that as per condition No.42.3(d) of terms and conditions of supply, disconnection can be made due to default in payment i.e., any other sums payable to the Board under the contract of supply or the tariff and terms and conditions of supply notified by the Board under Section 49 of the Electricity supply. The Board may without prejudice to its other rights cause to be disconnected all or any of the other services of the consumer though the said service be distinct and are governed by the sale agreement and though no default occurred in respect thereof thereafter. The above said condition clearly confirmed the rights on the part of the employees of the company to disconnect other service connection treating as link services. In fact, the respondents are entitled to disconnect the other service due to default in payment also without notice in order to recover the dues. Since both the services are in the name of Smt.Mallamma, the petitioner herein, she is responsible for the pending dues and also for the pilferage amount. It was further stated that the alleged disputes between the petitioner and her daughter-in-law cannot be related to the electricity service connection and at any rate the respondents are not parties to the said proceedings and irrespective of the pendency of the litigation between them the petitioner is liable to pay the pending dues forthwith or otherwise the respondents are entitled to disconnect the other service connection as they link services in order to recover the dues. The other allegations made in the affidavit filed in support of the Writ Petition also had been denied.

This is a matter concerned with the disconnection of electricity

service connection by the A.P. Transco. It is needless to say that the petitioner is governed by the terms and conditions of supply in relation to the service connections which she had obtained from the A.P. Transco. Condition No.42.3(d) of Terms and Conditions already had been specified supra. The respondents are not concerned with the internal disputes of the family members and the rights if any in between those parties may have to be worked out in appropriate proceedings and the respondents and the writ petitioner would be governed by the terms and conditions of supply of electricity. In view of the fact that the parties would be governed by the terms and conditions governing the electricity supply and in the absence of any specific provision in this regard to the contrary the relief prayed for by the writ petitioner cannot be granted since the parties are governed by the terms and conditions which had been agreed upon between the parties in relation to the electricity service connections. Hence, this Court does not see any merit in the Writ Petition. The Writ Petition is accordingly dismissed. No costs.

_____

Justice P.S. Narayana

Date : -6-2005

L.R. copy to be marked : YES / No

AM

To:

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1. The Superintendent, Engineer, Operation Assessment, A.P. Transco, South Circle, Hyderabad, Office at Sitharambagh, Hyderabad.
2. The Assistant Divisional Engineer, A.P. Transco. Distiribution - III, City, APCPDCL, sitharambagh, Hyderabad.

3. Two C.Cs. to Standing Counsel for APTRANSCO

High Court of Andhra Praesh,

Hyderabad.

4. **8 L.R. copies**

5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

6. The Secretary, A.P. Advocates Association Library, High court Buildings, Hyderabad.

7. Two C.D. copies